United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

75-4095

75-4147

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

LOCAL UNION 798 OF NASSAU COUNTY, NEW YORK, BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO,

Respondent.

On cross-application to Review and Set Aside Orders of the National Labor Relations Board

BRIEF FOR RESPONDENT LOCAL UNION 798 OF NASSAU COUNTY, NEW YORK, BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO

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>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . ."

Labor-Management Relations Act (Taft-Hartley Act) §8(b) (2), 29 U.S.C. §158(b)(2) (1970):

> "(b) It shall be an unfair labor practice for a labor organization or its agents —
>
> (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership".

Labor-Management Relations Act (Taft-Hartley Act) §8 (b)(3), 29 U.S.C. §158(b)(3)(1970)

"(b) It shall be an unfair labor practice for a labor organization or its agents —

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title".

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NATIONAL LABOR RELATIONS BOARD,

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BRIEF FOR RESPONDENT LOCAL UNION 798 OF NASSAU COUNTY, NEW YORK, BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO

ISSUES PRESENTED FOR REVIEW

1. Whether the stewards clause sought by the Union unlawfully encourages union membership.

2. Whether the Union's insistence upon the inclusion of the stewards clause in the collective bargaining agreement constitutes a refusal to bargain in good faith.

3. Whether the order of the National Labor Relations Board is appropriate or too broad.

COUNTER-STATEMENT OF THE CASE

A complaint was brought against Local Union 798 of Nassau County, New York, Brotherhood of Painters & Allied Trades, AFL-CIO (hereinafter referred to as "the Union"), alleging that a job steward clause in its collective bargaining agreements violated Sections 8(b)(1)(A) and 8(b)(2) of the Labor-Management Relations Act (hereinafter referred to as "the Act") by favoring union members over non-union members for employment. After a

hearing the Administrative Law Judge found the clause did not violate the Act and recommended dismissal of the complaint (A 12-13).[1] Three members of the NLRB decided to overrule the Administrative Law Judge (A 20-22) and the Union was ordered to "delete from the current collective bargaining contract . . . the unlawful steward's clause". (A 23) Two members of the Board dissented. (A 25-26)

Thereafter, the Union moved to reopen the record and for reconsideration (A 29-38). The Board denied both motions, again two members dissenting. (A 41)

Finally, the Union asked the Board to modify its order. Instead of deleting the entire clause, the Union asked the Board to require that the steward's clause include language which would render impossible even its theoretical application to prefer union over non-union members. (A 42-45) That motion was also denied. (A 47)

COUNTER-STATEMENT OF FACTS

Local Union 798 represents painters and tapers in Nassau County, New York. In December 1972, it started joint negotiations for modifications in its collective

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1/ All references are to the pages in the record before this Court.

bargaining agreements with two employer associations: one representing painting contractors, the other representing taping contractors. For all purposes relevant to this case, the collective bargaining agreements which expired on April 30, 1973 (hereinafter referred to as the "old contracts"), the proposals for modifications thereto, and the final language agreed upon in the new collective bargaining agreements were and are identical.

Each of the industries in the case is characterized by the existence of numerous employers (A 48-54). Each of the employers employs a small complement of regular employees (A 95, 117); e.g. only one or two employers might employ more than five tapers. (A 95)

Although the old contracts provided that the job steward's responsibilities included "enforcing Trade Agreement conditions" (A 58) even the General Counsel's employer witness testified that, under those contracts, "it's not been a common practice" for job stewards to enforce the trade agreement. (A 98) Under the old contracts the Union was relegated to selecting its job stewards from among the employer's employees. (A 108) Because the employers employed small, close-knit, regular

employee complements, the Union was convinced that it could not enforce the Trade Agreement on certain jobs unless it could choose its own job steward. The testimony, on this point, reads:

> "Q. And to what extent or what manner was the union handicapped in protecting its rights when the choice of or the selection of stewards had to be made from among employees in the then existing crews of the employer?
> A. Oh, the union didn't have a designated steward there and the violation is created and we had nobody actually representing the union where the union appointed the stewards, or, rather, designated the steward of their choice. This way here, in the old agreement the union would designate already one of the men that were employed. Therefore, there actually was no representation for the union to enforce our trade rules.
>
> Q. Why wasn't the steward selected from the regular crew of the employer as good as the steward selected from the union?
> A. Very simple. If a man works in a shop or an employer for years, his primary interest is working for the employer and having a steady job. His interest is not for the benefit of his fellow members."
> (A 132-133) (emphasis added)

Examples were given of the violations of the Trade Agreement which the Union sought to stop. (A 133-134) Under one such practice, "lumping", a painter would work at a "piece" rate rather than at the contractual "hourly" rate with compensation for such work being paid "underneath the

cover or off the books". (A 134)

The employers opposed any modification of the steward's clause which would result in the introduction into their work forces of employees whose productivity was unknown to them; but eventually, after more than fifteen negotiating sessions and a strike, the following steward's clause language was agreed to:

> "11. The Union, through the business representative, shall designate a qualfied journeyman as a steward on each and every job and the employer shall designate a foreman on each and every job subject to the following:
>
> a) There shall be a one-year trial basis on the steward program subject to reopening at the expiration of the first-year of this agreement; the re-opening limited to this item only.
>
> b) The Joint Trade Board to hear and determine all grievances on the steward issue.
>
> c) No work stoppage pending disputes on the steward issue.
>
> d) One man jobs to be exempt from the steward's program subject to investigation by the business representative."

The above clause was the result of substantial compromise by both the Union (A 96-97, 106, 137) and the employers.

In practice the new stewards clause worked without a hitch. The employers' fears of having an unqualified employee were not fulfilled and no grievance was filed under the clause. (A 101)

In practice, also, the clause never resulted in the preferment of a union member over a non-union member. There is neither an allegation, nor a scintilla of evidence, that the new stewards clause ever caused any such preferment. But the General Counsel argued that the clause could theoretically have that consequence because the Union's by-laws, admittedly legal, require that a person must be a member in good standing for at least three years before he is eligible to be a job steward.

Both the Administrative Law Judge and the two dissenting members of the Board found the General Counsel's position to be theoretical and divorced from the likelihood of ever becoming an actuality (A 11, 25) as to require its rejection. (A 12,26) Among the reasons for their findings is the existence in the collective bargaining agreements of valid "union security" and "maintenance of membership" provisions which require all employees

not already Union members when the agreements became effective, and all employees hired during the term of the agreements who were not already Union members, to become such members on the eighth day after their employment, and which require that all employees who were Union members when the agreements became effective to maintain such memberships during the terms of the agreements.

Thus, in order for the new stewards clause to result in discrimination on the basis of Union membership as against a non-member all of the following events would have to occur and all of the following facts would have to be present:

1) the employer must have hired a non-Union member within eight days of the Union designation of a job steward to the particular job on which the new non-Union member employee was assigned; and
2) the new employee must not want to become or did not become a member during his first eight days of employment; and

3) the Union must designate a person not already in the employer's employ to be the job steward [2]; and

4) the employer decides to lay off an employee because of the employment of the job steward [3]; and

5) the employer, not the Union, chooses to lay off the non-Union employee rather than another employee who is a Union member.[4]

Thus, not only must the employer act independently before there can be any discrimination, but the employers themselves conceded that the addition of a new job steward would not necessarily result in any layoff. (A 79) Therefore, the Administrative Law Judge found "the theoretical possibility... is hardly real" (A 11) and the dissenting members of the NLRB found any possible union preference "highly unlikely" (A 25) and the encouragement of union membership "to be indiscernible". (A 26)

2/ Under the new stewards clause, the Union still may designate a worker already employed by the employer to be job steward. (A 126-127)

3/ Only the employer, never the Union, can lay off an employee. (A 127)

4/ There is no seniority clause and the employer can lay off employees in any order it chooses. (A 96)

The three member Board majority ordered deletion of the stewards clause leaving the parties without any contractual mechanism for enforcement of the contract at the job level. Local 798 moved the Board to reopen the record and for reconsideration. An affidavit from a Union official in support of the motion reads in part.

> "6. The clause has now been in effect for over one year. No layoffs have resulted that I know of; no non-union men have been deprived of jobs that I know of; the communication from steward to Union Hall has been immeasurably improved; and I have received no complaints on it from the employers."
>
> "8. Nevertheless, to make it perfectly clear that the Union does not wish to become a party to the layoff of a non-union man by insisting upon this clause, and in support of our attorney's motion papers attached, I am willing to testify on the Record that the Union will go so far as to formally amend this Memorandum of Agreement of April 30, 1973 to accomplish this. I will testify that the Union will not insist that this clause be followed when the Employer indicates that he will have to lay off a non-union man if called upon to 'make room' for the steward; and I will testify that the Union will formally amend the Memorandum of Agreement referred to above to accomplish this objective." (A 37-38)

ARGUMENT

There is no finding in this case that any employee was discriminated against for any reason whatsoever. There is no finding, nor is there even an allegation, that there was any motive or intent on the part of the Union to obtain a provision in the collective bargaining agreement which would violate the Act by discriminating on the basis of Union membership. On the contrary, all the triers of fact have recognized the Union's legitimate objective in attempting to secure compliance with its collective bargaining agreements through having independent and informed job stewards present on the jobs for that purpose.

The Administrative Law Judge wrote as follows:

> "Even if we assume the slight theoretical possibility of discrimination as argued in General Counsel's brief, the importance and necessity of policing the collective bargaining agreement far outweighs the highly theoretical possibilities of some discrimination somewhere. Otherwise collective bargaining becomes a hollow farce." (A 12)

The dissenting members of the National Labor Relations Board wrote:

"Conduct which is engaged in solely for the purpose of promoting legitimate union objectives under the collective-bargaining relationship cannot be classified as an arbitrary encouragement of union membership and we would so find.

In short, the Union was attempting to secure adequate policing of its contract by union members who were more independent of the employer than his regular work force. It seems obvious that a steward should be a union member. Selecting him from those outside the regular employee complement seems to us to be justifiable here, and the 'encouragement' of union membership by such action to be undiscernible." (emphasis in original) (A 26)

POINT I

THE STEWARDS CLAUSE DOES NOT ARBITRARILY ENCOURAGE UNION MEMBERSHIP IN VIOLATION OF THE ACT.

The finding and holdings of the majority of the NLRB in this case reminds one of the pilpuls of Talmudic scholars,and the musings of Middle Age churchmen who concerned themselves with the question of how many angels could dance on the head of a pin. The majority strove mightily to discern some possible, theoretical illegality where reasonable men could see none. In doing so they

violated judicial instructions that language should not be twisted to create an illegality where none was intended.

> "In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives". NLRB v. News Syndicate Co., Inc. 365 U.S. 695, 699-700 (1961)

> "While there should be no interpretation of the Act which would deny to employees the rights which the Act provides, or restrict the exercise of those rights, the language used should not be distorted so as to reach unintended results". NLRB v. Texas Natural Gasoline Corp., 253 F.2d 322, 325 (6th Cir. 1958)

The stewards clause on its face is unobjectionable and there is no evidence nor allegation that its existence has resulted in a single instance of discrimination. The sole purpose of revising the clause was to enable the collective bargaining agreements to be more effectively policed and to maintain their integrity for the benefit of all employees working under them. The NLRB has recognized the legality of this objective, Ashley, Hickam - Uhr Co., 210 NLRB No. 1 (1974) and specifically held, in that case, that "Not every encouragement of union membership is unlawful ..."

Indeed, there are numerous clauses which encourage union membership and which have been held by the courts and the NLRB to be proper and legal under the Act. Such clauses include "union security", "maintenance of membership" and super-seniority" for job stewards. Examples of the cases are: Industrial Union of Marine and Shipbuilding Workers of America v. NLRB, 302 F.2d 615 (3rd Cir. 1963); Allied Chemical and Dye Corp., 97 NLRB 1248 (1952). It is interesting to note that the problem faced by the Union in this case, difficulty in obtaining enforcement of collective bargaining terms, is a recurrent one. Labor contracts are often violated with impunity because of employee dependence and fear. The court in Industrial Union of Marine and Shipbuilding Workers of America v. NLRB, supra at 619, recognized this danger and wrote:

> [S]uch a clause would preclude the union from prosecuting flagrant violations of the contract merely because the employee involved, due to fear of employer reprisals, or for similar reasons, chose not to sign a grievance. Hence, redress for a violation would be made contingent upon the intrepidity of the individual employee.

The importance of collective bargaining agreement

enforcement was recognized by the Supreme Court in upholding a contract provision which gave super-seniority to union representatives even above the statutory job protection provided by the Selective Service and Universal Military Training Acts. In Aeronautical Industrial District Lodge 727 v. Campbell, 337 U.S. 521 (1949), the Supreme Court held at page 528:

> "A labor agreement is a code for the government of an industrial enterprise and, like all government, ultimately depends for its effectiveness on the quality of enforcement of its code. Because a labor agreement assumes the proper adjustment of grievances at their source, the union chairmen play a very important role in the whole process of collective bargaining. Therefore it is deemed highly desirable that union chairmen have the authority and skill which are derived from continuity in office. A provision for the retention of union chairmen beyond the routine requirements of seniority is not at all uncommon and sure ought not to be deemed arbitrary or discriminatory. . . ."

Having a collective bargaining agreement which is flouted by employers does not serve the purposes of the Act. Indeed, such conduct cheats employees and renders nugatory their right to meaningful representation. An

inability to police the contract effectively makes for instability in labor relations — the antithesis of one of the goals of the Act.

The General Counsel, in trying to defend the majority decision of the Board, apparently found it necessary to construct a completely new theory. Although it was never argued before the Board, and although the Board never mentioned it as a basis for its decision, the General Counsel, before this Court for the first time, advances the theory that the stewards clause is illegal because it discriminates among union members rather than between union members and non-union members. (See General Counsel's brief, p.8, 10)

It is clear that:

> "The courts may not accept appellate counsel's post hoc rationalizations for agency action; Chenery requires that an agency's discretionary order be upheld, if at all, on the same basis articulated in the order by the agency itself... For the courts to substitute their or counsel's discretion for that of the Commission is incompatible with the orderly functioning of the process of judicial review." Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168-169 (1962)

The Supreme Court has held that there is:

> "a simple but fundamental rule of administrative law. That rule is to the effect that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis." SEC v. Chenery Corp., 332 U.S. 194, 195 (1947)

The majority of the Board tried to distinguish Ashley Hickham - Uhr Co., 210 NLRB No. 1 (1974), but, in our opinion, failed to do so. The stewards clause in Ashley Hickham was found by the Board to empower the union in that case, as in this case, to appoint job stewards to construction sites from without the employer's work force. In that case the union so acted and its appointment resulted in the discharge of an employee already on the job. The Board wrote:

> "The key issue is whether Respondent Union's action herein was arbitrary, invidious, irrelevant, and thus a mask for discriminatory motivation." 86 LRRM 1024, 1025

The General Counsel failed to sustain his burden of proof as to that key issue and the union's conduct was found to be protected.

In this case there is not a scintilla of evidence that the Union's purpose in demanding a change in the stewards clause was to encourage union membership, nor is there any evidence that the clause was so used. Indeed, the Union petitioned the Board to modify its order so as to rewrite the provision in such a way as to eliminate even the theoretical possibility that the clause might be used by the employer so as to seem to encourage union membership. The NLRB refused to modify its order.

POINT II

THE STEWARDS CLAUSE PROMOTES A LEGITIMATE UNION OBJECTIVE UNDER THE COLLECTIVE BARGAINING RELATIONSHIP AND IS A MANDATORY SUBJECT FOR BARGAINING UNDER SECTION 8(b)(3) OF THE ACT.

What falls within the list of mandatory subjects of bargaining is determined on a case by case basis in order to reflect the reality of industrial relations, United Steelworkers of America v. NLRB, 390 F.2d 846

(D.C. Cir. 1967) cert denied, 391 U.S. 904 (1968) and to give meaning and sense to the bargaining process and the ends of the Act. United Elec. Radio and Machine Workers of America v. NLRB, 409 F.2d 150 (D.C. Cir. 1969) (proposals for no strike clauses and effective arbitration provisions).

In this case the Board has the task also of resolving competing interests. This is a common aspect of its powers. In the exercise of this function, the Board has developed, for example, the one year insulation period after an election certification, the contract bar doctrine, and rules in regard to the voting eligibility of strikers and their replacements.

In each instance the Board resolved conflicts between competing interests all of which were fostered by the Act. In this case the decision of the Administrative Law Judge is manifestly correct. When the impact of the clause on the competing interests is weighed we find, at most, a theoretical possibility of some de minimus advantage to someone who happens to be a Union member on one side and the need for the Union to be able to choose experienced employees independent from employer dominated interests to

administer the collective bargaining agreement on the other.

The great importance given to the ability to administer collective bargaining agreements properly is manifested in legislation and court as well as NLRB decisions. Proper administration of the collective bargaining agreement is crucial to the day-to-day functioning of our working world, it is the oil that keeps the engine of interstate commerce running without excessive friction.

Congress has recognized the essential nature of union contract administration by providing specially for the propriety of employer payments to union job stewards when performing that work.[5/] This has been interpreted to include time spent representing the union in negotiations as well as in meetings with management after the contract has been executed. Federal-Mogul Corp., Coldwater Distribution Center v. NLRB, 394 F.2d 915 (6th Cir. 1968).

The National Labor Relations Board, the courts and arbitrators have all recognized the propriety of super-seniority provisions for union job stewards. This type of clause, giving special job tenure to union job stewards, has the same theoretical possibility of preferring union

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5/ Labor-Management Relations Act (Taft-Hartley Act) §8(a)(2), 29 U.S.C. §158(a)(2) (1970).

members over non-union members as in the instant case. Yet super-seniority for job stewards is a mandatory subject of bargaining. Industrial Union of Marine and Shipbuilding Workers of America v. NLRB, supra. As noted, the Supreme Court has recognized that the value to society in the proper administration of union-management contracts supersedes certain veterans' job rights as against super-seniority provisions for union job stewards, Aeronautical Industrial District Lodge 727 v. Campbell, supra; and arbitrators have held that super-seniority provisions require the actual hiring of individuals who are elected to job steward positions when not in the active employ of employers - even when such hirings cause the discharge of other employees. Alan Wood Steel Co., 35 L.A. 304 (1960); John Deere Planter Works, 23 L.A. 146 (1954). In every instance the common super-seniority clause is legal on its face - as is the job steward clause in this case. In almost every instance, however, the job steward, as in this case, must be a union member by virtue of a union by-law. In some instances the application of the super-seniority clause may result in preferring a union member to a non-union member. Such clauses are not, therefore, illegal. There is a balancing of

interests and the benefits under the Act derived by having union chosen job stewards on the job outweigh the hypothetical, de minimus possibility of union preference.

This deep recognition of the importance of proper union contract administration is reflected in other aspects of the law. For example, decisions assert the obligation of employers to provide information to unions so they can properly police and administer collective bargaining agreements. NLRB v Acme Industrial Co., 385 U.S. 432 (1967); Prudential Insurance Co. of America v. NLRB, 412 F.2d 77 (2nd Cir. 1969). Unions have the right to choose whoever they desire to act as their agents (with some restrictions of a public policy nature) and employers must deal with those agents even if they are representatives of unions different from those representing the employees involved. Minnesota Mining & Mfg. Co. v. NLRB, 415 F.2d 174 (8th Cir. 1969); General Electric Co. v. NLRB, 412 F.2d 512 (2nd Cir. 1969).

Likewise there has been a recognition that matters of direct importance to unions as such are mandatory subjects of bargaining such as union security provisions and dues

checkoff. Caroline Farms Division of Textron Inc. v. NLRB, 401 F.2d 205 (4th Cir. 1968); NLRB v Reed & Prince Mfg. Co., 205 F.2d 131 (1st Cir. 1953) (check-off); NLRB v Andrew Jergens Co., 175 F.2d 130 (9th Cir. 1949) (union security).

Moreover in interpreting and applying the National Labor Relations Act the Board and the courts have deliberately refrained from being overly technical and have applied the Act to fulfill its basic purposes without permitting insubstantial union failures to stymie those ends. NLRB v. Rockaway News Co., 345 U.S. 71 (1953); NLRB v. Dant, 344 U.S. 375 (1953); NLRB v. Reed & Prince, supra; NLRB v. United Electrical Radio & Machinery Workers, 203 F.2d 673 (3rd Cir. 1953); New York Electric & Gas Corp., 135 NLRB 357 (1962).

The Board and the Administrative Law Judge, in interpreting and administering the Act, have opted for the real rather than the theoretical. The Board is not formulating orders for a mythical world. Its decisions must be designed to help the actors on the industrial relations scene fulfill their roles.

The interpretation of the wording of a contract

should be fair and not twisted so as to arrive at a conclusion creating an illegality where none was intended.

> "While there should be no interpretation of the Act which would deny to employees the rights which the Act provides, or restrict the exercise of these rights, the language used should not be distorted so as to reach unintended results...." NLRB v. Texas National Gasoline Corp., supra at 325.

POINT III

THE BOARD ORDER IS TOO BROAD AND DOES NOT EFFECTUATE THE PURPOSES OF THE ACT.

We maintain that the stewards clause is legal. But, even if the clause were found to be illegal, the order of the Board is overbroad.

Under the Act the Board has flexible powers to fashion appropriate remedies to effectuate the policies of the Act. Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964); NLRB v. Mackay Radio & Tele. Co., 304 U.S. 333 (1938); Operating Engineers Local 138 v. NLRB, 321 F.2d 130 (2nd Cir. 1963). Remedies which are within the Board's authority will be sustained; however, remedies

which are not remedial in nature are reversed or modified. Phelps Dodge Corp. v. NLRB, 313 U.S. 117 (1941); Republic Steel Corp. v. NLRB, 311 U.S. 7 (1940).

In the instant case, the Board has ordered the alleged discriminatory clause to be excised in its entirety from the collective bargaining agreement. It used a bludgeon rather than a scalpel. The Board has, in effect, thrown the baby out with the bath water. Enforcement will not be granted by the courts where the Board's order is too broad as written. May Dep't Stores Co. v. NLRB, 326 U.S. 376 (1945).

The order in the instant case is overly broad. The Union in the Board's order cannot appoint any steward on any job. Rather than let the parties live with a limited stewards clause, the Board has decided for them that they shall have no stewards clause at all. The order should not be enforced.

CONCLUSION

For the reasons set forth above the order of the NLRB should be set aside. However, if this Court should find the stewards clause as written violates the

law, the order of the Board should be modified so as to eliminate the violation only; thereby saving the clause for the purpose of permitting enforcement of the collective bargaining agreements.

Respectfully submitted,

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RALPH P. KATZ
Of Counsel

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

SHIRLEY G. SHIRE, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 20 East 35th Street, New York, New York. On October 31, 1975 deponent served two copies each of Respondent's brief in support of its cross application to set aside the Board's orders herein upon the National Labor Relations Board, Washington, D. C. 20570, by Elliott Moore, Deputy Associate General Counsel, Allison W. Brown, Jr., Aileen A. Armstrong, Attorneys and Erwin Popkin, Esq., Popkin, Barnett, Lonorof at 1399 Franklin Avenue, Garden City, New York 11508, attorneys for charging party in this action, at the above addresses, the addresses designated by said attorneys for that purpose by depositing true copies of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Shirley G. Shire

Sworn to before me this
31st day of October, 1975.

William Basedow
Notary Public

WILLIAM BASEDOW
NOTARY PUBLIC, State of New York
No. 41-4500921
Qualified in Queens County
Commission Expires March 30, 1977